IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 6229 of 2023
Asiatic Society's Employees' Union & Anr.
Vs.
The Union of India & Ors.

For the Petitioners	: Mr. Kallol Basu, Mr. Suman Banerjee.
For the Union of India	: Mr. Souvik Nandy, ld. Sr. adv. Mr. Arijit Majumdar, Ms. Shreyashi Sarkar.
For the Respondent no. 5	: Mr. Rajib Ray.
For the Respondent no. 2	: Ms. Sayanti Roy Chowdhury, Ms. Biswadeepa Mondal.
Judgment reserved on	: 29.06.2026/13.07.2026
Judgment delivered on	: 20.07.2026

SHAMPA DUTT (PAUL), J. :

1. The present writ application has been filed, inter alia, challenging the decision taken by the respondent nos. 1 to 4 to stop deduction of the provident fund contributions from the members of the petitioner no.1 in excess of Rs. 15,000/- in terms of and in furtherance of the communication dated 25th

January 2023 issued by the **Director, Ministry of Culture, Government of India.**

2. It is the contention of the petitioners that the respondent no. 2 is an **autonomous institution** and is covered by the provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act"). According to the petitioners, the service rules for the employees of the respondent no. 2 were prepared sometimes in the year 1991 and the same became effective on and from 1st December 1998. **Clause 28** of the said rules, inter alia, stipulates that the employees of the respondent no. 2 shall be entitled to pension, gratuity, family pension and **General Provident Fund benefits as admissible to the employees of the Government of India from time to time.**

3. **The Office memoranda dated 2nd December 1997, 3rd September 2008 and 13th January 2017 issued by the Government of India, Ministry of Finance, Department of Expenditure, shows that by such orders the revision of pay and allowances have been made effective, insofar as the respondent no. 2 is concerned.** By the aforesaid orders, the Government has also provided that deduction on account of provident fund or contributory provident fund will have to be made on the basis of the revised pay structure with effect from the date the employees opt to elect the revised pay structures. Reliance is also placed on office memorandum dated 10th June, 1999 at page 13 of the supplementary affidavit.

4. Relevant portion of the Government Order dated 13th January 2017 which, inter alia, provides for deduction of provident fund on the revised pay structure, is extracted herein below:

> "(iii) *Deductions Provident Fund, Contributory Provident Fund or National Pension System,* ***as may be applicable, will have to be made on the basis of the revised pay with effect from the date an employee opts to elect the revised pay structure.***"

5. The contention of the learned counsel for the petitioner is that in terms of an office order dated 18th May 2001 regulation no. 7, the respondent no. 2 had, inter alia, decided as follows:-

> "*In this accordance with stipulation* ***the employees are entitled to contribute at higher rate than that is prevailing at present which is 12% of salary as stipulated in the Act. The Employer's contribution should also be equal to the contribution of the employees subject to maximum of 12% of Pay and admissible D.A.***
>
> ***It is, therefore, decided to follow the Regulation of the Society in terms of the aforesaid Provident Fund Act.*** *This is being*

made effective from the salary month of ***May, 2001 onwards.***

In case any employee of the Society desires to contribute to C.P.F. at the old rate prevailing prior to May, 2001 the rate of employers' contribution will remain same as before.. If no intimation is received from any employee in writing before 25th May, 2001 the contribution to the E.P.F. shall be guided in terms of provisions contained under Regulation VII of the Asiatic Society."

6. It is further stated that the members of the petitioners had not only opted for deduction of contributions at higher rate but also as per revised pay structure.

7. By referring to a **communication dated 25th January 2023 issued by the Director, Government of India, Ministry of Culture,** addressed to the General Secretary, Asiatic Society, it is submitted that the Government of India, contrary to the statutory provisions, had decided to limit the deduction of the provident fund contributions to Rs.15,000/- per month, inter alia, by observing as follows:-

> *"It has been decided that for the existing EPF subscribers,* ***Employer's Contribution to the EPF is to be made at the rate of 12% on EPF Wages (comprising Basic Pay & D.A.) applying EPF Wages limit of Rs.15000/- per month and that the contribution should not exceed this rate and limit as prescribed in the EPF rules. The Chairman advised for strict***

adherence to the contribution limit as per rules."

8. Vide letter dated 25th July, 2023, the respondent no. 2 has been directed to take the following action:-

"Accordingly, ASK is requested to take the following action immediately:-

(i) *Provide the monthly details of Salary of employees in an excel sheet (one sheet for each month) with at least columns namely Employee name, Basic Pay, DA, HRA, Transport Allowance, Total Salary, EPF contribution by employer, EPF contribution by Employee, irregular bonus paid to employee during 2015-2018;*

(ii) ***Stop contribution to Employer's share in violation of EPF provision as pointed out by Audit immediately and send a revised ATN within 15 days.***

(iii) *<u>Fix responsibility of all officers in the chain for violation of EPF provisions and provide the name of officers responsible for non compliance of Government instructions.</u>*

(iv) *Convene the meeting of Planning Board immediately to deliberate this matter.*

(v) *Please ensure that all replies to any litigation in any court/tribunal on this subject matter etc be got vetted by Ministry"*

9. The petitioners contend that the aforesaid direction is contrary to the statutory provisions and infringes upon the petitioners' rights. It is submitted that in terms of the aforesaid direction, the respondent no. 2 has already issued an office order dated 6th February 2023 and had thereby, resolved as follows:-

> *"In pursuance to the decision of the Council of the Society vide resolution to the agenda item no. 8 of its meeting held* **on 31.01.2023,** *for the existing EPF subscribers of the Society,* ***the Employer's contribution to the EPF will be made at the rate of 12% (Twelve percent) on EPF Wages (comprising Basic Pay & DA) applying the EPF Wages limit of Rs. 15,000/- (Rupees Fifteen Thousand) per month in terms of the existing provisions prescribed in Para 29 (1) and 26A(2) respectively of the Employees' Provident Fund and Miscellaneous Provisions (EPF & MP) Scheme, 1952 (Scheme) under the EPF & MP Act, 1952."***

10. According to Mr. Basu, the aforesaid decision taken by the respondent no. 2 is **unilateral and cannot override the joint request made by the respondent no. 2 and the petitioners, before the Provident Fund authorities in terms of paragraph 26.6 of the Employees Provident Fund and Miscellaneous Provisions Scheme, 1952 (hereinafter referred to as the**

"Said Scheme"). The aforesaid office order seeks to infringe upon the petitioners' rights as envisaged **under the provisions of paragraph 26.6 of the said Scheme.** He further submits that as and by way of abundant caution, the petitioners have sought for a declaration that proviso to sub-para 2 of paragraph 26A of the said Scheme to be ultra vires. It is, however, the contention of Mr. Başu that the petitioners have an independent right to enforce its claim under paragraph 26.6 of the said Scheme.

11. Mr. Ray, learned advocate appearing for the Provident Fund authorities on the other hand submits that **the decision taken by the respondent no. 2 to call upon its employees to make contribution at higher rate was. in consonance with the provisions of paragraph 26.6 of the said Scheme. Both the respondent no. 2 as also its employees having jointly applied, in terms of paragraph 26.6 of the said Scheme and such request having found in order, was accepted by the provident fund authorities and consequent thereupon, both the employer and the employee had been contributing at higher rate in terms of the said Scheme.**

12. The communication dated 25th January, 2023 issued by the Director, Ministry of Culture, Government of India calling upon the respondent no. 2, to revise the contributions payable both by the employee and the employer is contrary to the said Scheme. **According to Mr. Ray, paragraph 31 of the said Scheme read with Section 12 of the said Act, creates an impediment on respondent no. 2 in reducing the contributions payable by the employees of the respondent no.2.**

13. The decision taken by the respondent no. 2 vide order dated 6th February 2023, if implemented would create an incongruous situation.

14. The parties in the present case have filed their respective written notes and the judgments relied upon.

15. From the materials on record it appears that the petitioners are employees of the respondent no. 2. It is also an admitted position that in terms of the option given to the members of the petitioners and the members having opted, jointly with the respondent no. 2, for contributing at higher rate and the respondent no. 2 since the year 2001 have deducted contributions from the members of petitioners, who are its employees at higher rate.

16. The petitioners in their written notes have reiterated their entire case as made out in their writ application. It is argued on behalf of the petitioner by Mr. Basu, that the members and office bearers of the petitioners No. 1 met the respondent No. 3

and 4 and prayed for taking remedial measures to continue the Employees' Contribution towards Employees Provident Fund i.e. 12% of Basic Pay and Dearness Allowance with the matching grant of Employer's Contribution in terms of the Office Order No. 37 dated 18.05.2001 issued by the respondent No. 4. **However the respondent No. 4 issued an Office Order No. 38 dated 06.02.2023 whereby the employers' contribution was restricted to the ceiling limit and liberty was given to the employees to contribute over the ceiling limit.** Accordingly the respondent No. 4 made a prayer to the respondent No. 1 in this regard. However on 08.02.2023, such prayer was rejected on a flimsy ground.

17. The petitioners submit that the employees of the Respondent No. 2, despite serving in an institution of national importance **under the aegis of Respondent No. 1,** are not given any protection or security after their retirement by the respondent authorities concerned which not only is illegal but also destroys the very basis of the governance.

18. **The respondent no. 1/the Union of India by filing their written notes** have argued that the genesis of this instant issue arose from an office order No. 37 dated 18.05.2001 issued by the respondent No. 2, 3 and 4 herein regarding the employer's contribution payable to the EPF accounts as mentioned in the said office order is inconsistent with the relevant provisions i.e. paragraph 26A (2) of the Employees' Provident Fund and Miscellaneous Payments Scheme, 1952, regarding statutory wage ceiling limit.

19. Paragraph 26A (2) stipulates that the employer should not be under an obligation to pay any contribution over and above the prescribed limit fixed under paragraph 29 (2) of the said Scheme.

20. In the present case, respondent No. 2, 3 and 4, being a grantee, is **fully funded by the respondent No. 1 through grant-in-aid.** It is under obligation to comply with all the acts, regulations, guidelines, policies, directions and instructions issued by the Government of India with regards to financial prudence. **The Bye-Laws of the respondent No. 2, 3 and 4 provide that the provident fund of its employees' will be guided by the Employees' Provident Fund and Miscellaneous Payments Act, 1952.**

21. The Comptroller and Auditor General vide audit paragraph No. 6.3 of its Report No. 4 of 2018 regarding "Excess contribution to Employees' Provident Fund Asiatic Society, Kolkata" has observed that the respondent No. 2 contributed its share of the provident fund to the employees at the rate of **12% of the total pay** instead of restricting it to the maximum wage **ceiling of**

Rs. 15,000/- which resulted in excess contribution of approximately 7 crores. **This undue contribution has been made by the respondent No. 2 i.e. Asiatic Society, Kolkata without any approval from the respondent no. 1 herein, from the Grant in-Aid given by the Ministry.**

22. The respondent No. 1 has been taking up this matter with respondent No. 2, 3 and 4 since, May, 2017 for the settlement of Audit observation and stoppage of the employer's contribution over and above the statutory limit and recovery of excess payment already made vide Ministry's letter dated 04.05.2017, 13.06.2017, 04.07.2017, 23.12.2017, 19.06.2018, 20.08.2018, 05.10.2018, 31.01.2019, 21.02.2019, 17.05.2019, 30.09.2019, 04.10.2019, 10.12.2019, 18.02.2020, 09.08.2021, 01.01.2022, 25.01.2023, 08.02.2023 and 20.02.2023 etc.

23. Despite several communications from the respondent No. 1, as has been stated in the preceding paragraph, in respect of the recovery of excess employer's contribution over and above the statutory limit, respondent No. 2, 3 and 4 could not recover and till date **approximately 7 crores remains excess contributed from government exchequer.**

24. It is thus submitted by the respondent no. 1 that the petitioners do not have any right to claim parity or equality, when the authority has made an error apparent, by misinterpreting the statutory provision. **And on the other hand, writ petitioners to their own benefit have all along misinterpreted the statutory provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Employees' Provident Funds Scheme, 1952.**

25. The respondent no. 1 has thus prayed for dismissal of the writ application. The respondent no. 2 herein being the Secretary of the petitioner no. 1 herein has supported the case of the respondent no. 1/Union of India. The specific case of the respondent no. 2 is that as an **administrative error,** the omission of such limit in the said disputed order, the Employer's contribution was deposited @**12% on the entire of employee's basic wages, dearness allowance and retaining allowance (if any).**

26. Respondent no. 2 further submits that this action was surely an erroneous implementation of the order as the order itself specifically mentions that:-

> *"The regulation VII of the Asiatic Society regarding Provident Fund stipulates that the Provident Fund of the employees of the Asiatic Society shall be guided by the Employees Provident Fund and Miscellaneous Provision Act, 1952....It is therefore decided to follow the provision of the Act..." That* ***paragraph 26A(2)*** *of the Employees'*

Provident Fund and Miscellaneous Payments Scheme, 1952, is regarding statutory wage ceiling limit. ***Paragraph 26A(2)*** *stipulates that the employer is not under an obligation to pay any contribution over and above the prescribed limit fixed* ***under paragraph 29(2)*** *of the said Scheme."*

27. It is further stated that though in paragraph 29 (2) of the said Scheme it is mentioned that 'employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Act', but the decision of exceeding the limit of Rs.15000 as reference salary ought to have been taken by the Asiatic Society, Kolkata **with prior approval of the Ministry of Culture.**

28. It is also stated that any decision having financial implication ought to have been passed by the Standing Finance Committee (SFC) of the Asiatic Society, Kolkata and **for this an approval of Ministry of culture is also needed.**

No such approval was there while Order 37 was passed. Neither any mention of exceeding such limit was mentioned there in the order.

Thus, it can be said that there was an error at the implementation of the Act. "

29. Regarding the excess payment, it is submitted by the respondent no. 2, that Excess payment which has become payable to beneficiaries (i.e.) the persons who have already retired and the excess contribution which has been deposited in the EPF accounts of the employees, not yet become payable, as the concerned employees have not yet retired, recovery, if any, in respect of the first category may actually be termed as "recovery". But for the second category, the term 'recover' would not be applicable to them as no excess payment has been done yet and **the money is still with EPFO.**

30. The **respondent no. 5/the EPF authority** has argued as follows:-

> *"That a breach of any of these requirements is made a penal offence. As such, any effort by the employer to deny employees, the legitimate dues, which they have rightfully earned in terms of the provisions of the act, need to be looked upon with suspicion."*

31. It is stated that in case of failure to deposit the legitimate dues of the workers, the EPFO has been empowered by the Act to initiate inquiry under section 7A and 14B of the said Act by giving the reasonable opportunities of being heard to the employer, followed by quantifying interest under Section 7Q of the Act to make good the interest allowed to the member's credit as per the provision of Para 60 of the EPF Scheme, 1952.

32. It is further stated that it is often seen that employers/establishments resort to filing the petition in the Hon'ble Court once the recovery process has been started which in any case start after default of the legitimate dues have been committed by such employer. The employer files such cases with a view to defect the object of the social security legislation which provides for lump sum payments to the employees on their retirement so that they can spend their retired life with some element of comfort.

33. It is therefore prayed that the Hon'ble Court may kindly consider the purpose behind the legislation (EPF & MP Act, 1952) as enumerated above while considering the case of the employer.

34. That Asiatic Society hereinafter referred as the establishment was covered under Employees Provident Fund Miscellaneous Provisions Act, 1952 with effect from 01.12.1974 vide P.F. Code No. 15600.

35. The said respondent thus indirectly supports the case of the petitioners herein.

36. It is further stated by the provident fund authorities that this answering respondent have received several letters from the said establishment regarding C&AG Audit Report No. 4 of 2018 wherein at Para no. 6.3 titled as "Excess contribution to Employees Provident Fund in The Asiatic Society, Kolkata" and seeks an opinion **whether the excess contribution to EPF made by the employer as reported by the audit is recoverable or not.**

37. The petitioner in the present case has relied upon the following judgments:-

(i) ***S. Satyapal Reddy & Ors. versus Govt. of A.P. & Ors., (1994) 4 SCC 391, Para 7(g).***

> ***"7.*** *..............Whether there is an apparent repugnance or conflict between Central and State laws occupying the same field and cannot operate harmoniously in each case the court has to examine whether the provisions occupy the same field with respect to one of the matters enumerated in the Concurrent List and whether there exists repugnancy between the two laws. Article 254 lays emphasis on the words "with respect to that matter". Repugnancy arises when both the laws are fully inconsistent or are absolutely irreconcilable and when it is impossible to obey one without disobeying the other. The repugnancy would arise when conflicting results are produced when both the statutes covering the same field are applied to a given set of facts. But the court has to make every attempt to reconcile the provisions of the apparently conflicting laws and court would endeavour to give harmonious construction. The purpose to determine inconsistency is to ascertain the intention of Parliament which would be gathered from a consideration of the entire field occupied by the law. The proper test would be whether effect can be given to the*

provisions of both the laws or whether both the laws can stand together……….”

(ii) Som Lal versus Vijay Laxmi & Ors., (2008) 11 SCC 413, para 15.

“15. *Mr Patwalia, learned Senior Counsel for the respondents invited our attention to Chapter VII at p. 637 of Principles of Statutory Interpretation (11th Edn., 2008) by Justice G.P. Singh, which reads as under:*

“The use of any particular form of words is not necessary to bring about an express repeal. All that is necessary is that the words used show an intention to abrogate the Act or provision in question. The usual form is to use the words ‘is or are hereby repealed’ and to mention the Acts sought to be repealed in the repealing section or to catalogue them in a schedule. The use of words ‘shall cease to have effect’, is also not uncommon. When the object is to repeal only a portion of an Act words ‘shall be omitted’ are normally used. The legislative practice in India shows that ‘omission’ of a provision is treated as amendment which signifies deletion of that provision and is not different from repeal. It has been held that ‘there is no real distinction between repeal and an amendment’. It has also been held that ‘where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of re-enacted provision’.”

(emphasis in original)

Similarly, our attention was invited to a paragraph at p. 639. There it has been observed as follows:

“The legislature sometimes does not enumerate the Acts sought to be repealed, and only says that ‘all provisions inconsistent with this Act’ are

hereby repealed. With respect to such a repealing provision, it has been said that it merely substitutes for the uncertainty of the general law an express provision of equal uncertainty; and in determining whether a particular earlier provision is repealed by such a repealing provision on the ground of inconsistency with it, the same principles which are applicable in determining a question of implied repeal have to be applied."

At p. 640, under the heading Implied repeal it has been observed as follows:

"There is a presumption against a repeal by implication; and the reason of this rule is based on the theory that the legislature while enacting a law has a complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislation. When the new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle expressio unius est exclusio alterius. Further, the presumption will be comparatively strong in case of virtually contemporaneous Acts. The continuance of existing legislation, in the absence of an express provision of repeal, being presumed, the burden to show that there has been a repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act 'that the two cannot stand together'."

(iii) Regional Provident Fund Commissioner Versus Hooghly Mills Company Limited & Ors., (2012) 2 SCC 489, para 24 to 35.

*“**24.** If we look at the modern legislative trend we will discern that there is a large volume of legislation enacted with the purpose of introducing social reform by improving the conditions of certain class of persons who might not have been fairly treated in the past. These statutes are normally called remedial statutes or social welfare legislation, whereas penal statutes are sometime enacted providing for penalties for disobedience of laws making those who disobey, liable to imprisonment, fine, forfeiture or other penalty.*

***25.** The normal canon of interpretation is that a remedial statute receives liberal construction whereas a penal statute calls for strict construction. In the cases of remedial statutes, if there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted, but in cases of penal statutes if there is any doubt the same is normally resolved in favour of the alleged offender.*

***26.** It is no doubt true that the said Act effectuates the economic message of the Constitution as articulated in the directive principles of State policy. Under the directive principles the State has the obligation for securing just and humane conditions of work which includes a living wage and decent standard of life. The said Act obviously seeks to promote those goals. Therefore, the interpretation of the said Act must not only be liberal but it must be informed by the values of the directive principles. Therefore, an awareness of the social perspective of the Act must guide the interpretative process of the legislative device.*

***27.** Keeping those broad principles in mind, if we look at the Objects and Reasons in respect of the relevant section it will be easier for this Court to appreciate the statutory intent. The opening words of Section 14-B are, “where an employer makes default in the payment of any contribution to the fund”. This was incorporated by way of an amendment, vide amending Act 37 of 1953. In this connection, the excerpts from the*

Statement of Objects and Reasons of Act 37 of 1953 are very pertinent.

28. *The relevant excerpts are:*

"There are also certain administrative difficulties to be set right. There is no provision for inspection of exempted factories; nor is there any provision for the recovery of dues from such factories. An employer can delay payment of provident fund dues without any additional financial liability. No punishment has been laid down for contravention of some of the provisions of the Act.

This Bill seeks primarily to remedy these defects. SOR, Gazette of India, 1953, Extra, Part II, Section 2, p. 910."

29. *Similarly, in respect of Section 17(1-A) clause (a) which makes Section 14-B applicable to an exempted establishment also came by way of an amendment, namely, by Act 33 of 1988. Here also if we look at the relevant portion of the Statement of Objects and Reasons of Act 33 of 1988 we will find that they are based on certain recommendations of the high-level committee to review the working of the Act.*

30. *Various recommendations were incorporated in the Objects and Reasons and one of the objects of such amendment is as follows:*

"(viii) the existing legal and penal provisions, as applicable to unexempted establishments, are being made applicable to exempted establishments, so as to check the defaults on their part;"

31. *It is well known that an interpretation of the statute which harmonises with its avowed object is always to be accepted than the one which dilutes it.*

32. *The problem of statutory interpretation has been a matter of considerable judicial debate in almost all common law jurisdictions. Justice Felix Frankfurter dealt with this problem rather comprehensively in his Sixth Annual Benjamin N. Cardozo Lecture [see Some Reflections on the Reading of Statutes, (1947) 47 Columbia Law Review 527]. The learned Judge opined:*

“Anything that is written may present a problem of meaning, and that is the essence of the business of Judges in construing legislation. The problem derives from the very nature of words. They are symbols of meaning.”

About what the words connote, there is a very illuminating discussion by Friedrich Bodmer, a Swiss Philologist in his treatise The Loom of Language. Bodmer, who was a Professor in the Massachusetts Institute of Technology, said:

“Words are not passive agents meaning the same thing and carrying the same value at all times and in all contexts. They do not come in standard shapes and sizes like coins from the mint, nor do they go forth with a degree to all the world that they shall mean only so much, no more and no less. Through its own particular personality each word has a penumbra of meaning which no draftsman can entirely cut away. It refuses to be used as a mathematical symbol.”

33. *The aforesaid formulation by Professor Bodmer was cited with approval by the Constitution Bench of this Court in Supreme Court Advocates-on-Record Assn. v. Union of India [(1993) 4 SCC 441] , SCC at p. 553, para 59. Holmes, J. in Towne v. Eisner [62 L Ed 372 : 245 US 418 (1917)] thought in the same way by saying: (L Ed p. 376)*

“… A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used.”

34. *Therefore, about the problem of interpretation we may again go back to what Justice Frankfurter said in the aforesaid article. This is of considerable importance. The learned Judge said:*

> *"… The process of construction, therefore, is not an exercise in logic or dialectic: the aids of formal reasoning are not irrelevant; they may simply be inadequate. The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone…."*
>
> ***35.** Therefore, while construing the statute where there may be some doubt the Court has to consider the statute as a whole—its design, its purpose and the remedy which it seeks to achieve. Sinha, C.J. of this Court, in State of W.B. v. Union of India [AIR 1963 SC 1241] , AIR at p. 1245, emphasised the importance of construing the statute as a whole. In the words of the Chief Justice: (AIR para 68)*
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> *"68. … the court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."*

38. The Respondents/Provident Fund Authorities in the present case have relied upon the judgment in:-

a) Syed Abdul Qadir & Ors. Versus State of Bihar & Ors., (2009) 3 SCC 475, Para 57 & 58.

> ***"57.** This Court, in a catena of decisions, has granted relief **against recovery of excess payment of emoluments/allowances if** (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee; and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, **which is subsequently found to be erroneous.***

> ***58.*** *The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar[3], V. Gangaram v. Director, Col. B.J. Akkara (Retd.) v. Govt. of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bhadur."*

b) State of Haryana & Ors. Vs Ram Kumar Mann reported in (1997) 3 SCC 321, Para 3.

> *"the respondent has no right, whatsoever and cannot be given the relief wrongly given to them. In a converse case, in the first instance, one may be wrong but* ***the wrong order cannot be the foundation for claiming equality for enforcement of the same order. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrong can never make a right."***

39. The provisions of the employees provident and MP Act referred to by the parties and being relevant in the present case are as follows:-

i. ***Section 26.6 of the Employees Provident Funds Scheme:-***

> *"Section 26.6. Notwithstanding anything contained in this paragraph, [an officer not below the rank of an Assistant Provident Fund Commissioner] may,* ***on the joint request in writing of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than [fifteen thousand rupees] of his pay per month*** *if he is already a member of the fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee."*

ii. ***Section 26A(2) of the Employees Provident Funds Scheme:-***

> ***"Section 26A(2)*** *Every member employed as an employee other than an excluded employee, in a factory or other establishment to which this Scheme applies shall contribute to the fund, and the contribution shall also be payable to the fund in respect of him by the employer. Such contribution shall be in accordance with the rate specified in paragraph 29:*
> *Provided that* ***subject to the provisions contained in sub-paragraph (6) of paragraph 26 and [in paragraph 27], or sub-paragraph (1) of paragraph 27-A,*** *where the monthly pay of such a member exceeds [fifteen thousand rupees], the contribution payable by him, and in respect of him by the employer,* ***shall be limited to the amounts payable on a monthly pay of [fifteen thousand rupees] including [dearness***

allowance, retaining allowance (if any) and] cash value of food concession."

iii. Section 29(1) of the Employees Provident Funds Scheme:-

*"**Section 29(1)** The contributions **payable by the employer** under the Scheme shall be at the rate of [ten per cent] of the [basic wages, dearness allowance (including the cash value of any food concessions) and retaining allowance (if any) payable to each employee to whom the Scheme applies:*
*[Provided that the above rate of contribution shall be [twelve per cent.] in respect of any establishment or class of establishments which **the Central Government may specify** in the Official Gazette from time to time under the first proviso to sub-section (1) of section 6 of the Act]."*

40. Para 31 of the employees provident fund scheme:-

*"**31. Employer's share not to be deducted from the members.**- Notwithstanding any contract to the contrary the employer shall not be entitled to deduct the employer's contribution from the wages of a member or otherwise to **recover it from him.***

41. Section 12 of the EPF & MP Act lays down:-

*"**12. Employer not to reduce wages, etc.**—No employer in relation to [an establishment] to which any [Scheme or the Insurance Scheme] applies shall, by reason only of his liability for the payment of any contribution to [the Fund or the Insurance Fund] or any charges under this Act or the [Scheme or the Insurance Scheme], **reduce, whether directly or indirectly,** the wages of any employee to whom the [Scheme or the Insurance Scheme] applies or the total quantum of benefits in the nature of old age pension, gratuity [Provident Fund or Life Insurance]*

to which the employee is entitled under the terms of his employment, express or implied.]"

42. Parties have filed the respective affidavits in opposition and reply thereto.

43. The petitioners contention in their supplementary affidavit is:-

> *"That it is submitted that in the Office Memorandums issued by the Department of Expenditure, Ministry of Finance, Government of India implementing the recommendations of the Fifth Central Pay Commission, Sixth Central Pay Commission and Seventh Central Pay Commission to the autonomous bodies, it has been categorically mentioned that the deductions on account of provident fund or contributory provident fund, as the case may be, will have to be made on the basis of the revised pay with effect from the date the employee opts to elect the revised pay structure. As such it is the duty of the respondent authority concerned to make Employees' Contribution towards Employees Provident Fund at the rate of 12% of Basic Pay and Dearness Allowance with the matching grant of Employer's Contribution without applying any ceiling limit as per the Employees' Provident Funds Scheme, 1952.*
>
> *That it is submitted that the ceiling limit as per the Employees' Provident Funds Scheme, 1952 does not preclude an employer to make a contribution to the fund over and above the ceiling limit and the same only restricts the mandatory duty to that extent only."*

44. Office memorandum dated 30th September, 2008 and Government order dated 13.01.2017 states in respect of **"deduction"** on account of provident fund on revised pay. The word **'deduction'** indicates that it is the employee whose deduction of P.F. would be on revised pay.

45. In case of the employer, the payment towards PF in respect of its employer is termed as **"contribution".**

46. In reply the petitioners have reiterated their case as made out in their writ application.

47. The respondent no. 5 the PF authority further states that:-

> *"The contribution which has been deposited over the wage ceiling cannot be now reduced and limit to the wage ceiling again. The employer and employee remain bound to continue to contribute such contribution on such salary/wages on which PF and allied contribution has been remitted till the last remittance made."*

48. It is further stated that the deposit on ceiling limit was made as per Para 26(6) of the EPF Scheme on mutual consent.

49. Therefore when the statute itself allows such deposit there arises no question of any excess payment in the statutory fund. This respondent (no. 5) supports the petitioners.

50. The respondents no. 2, 3 and 4 the Asiatic Society agree that:-

> *"The Asiatic Society was paying Employer's contributions of provident fund at a higher amount from 2001 onwards. In the year 2023, the long standing mistake of Employer's contributions was detected and the first respondent directed the Asiatic Society to rectify the mistake and comply with the rules regulating the payment of Employer's contributions of provident fund to its employees. The direction of the first respondent was sought to be implemented by the Asiatic Society and being aggrieved, the employees of the Asiatic Society filed the instant Writ Petition. Therefore, the payment of employees' contributions was put on hold from*

> *February 2023 to September 2023. The payment of employees' contributions was restored from the month of October 2023 in compliance of the interim order passed in the instant Writ Petition. Therefore, the Asiatic Society could not be held liable for payment of any damages or interest."*

51. The respondent no. 2 herein is an autonomous institution which functions under the Ministry of Culture, Govt. of India. It receives grant in aid from the Govt. of India. **The service rules of the society were duly approved by the government of India on 25.05.1999 except clause being SR 28** which is as follows:-

> ***"RETIREMENT AND OTHER BENEFITS, PENSION AND PROVIDENT FUND***
>
> ***SR 28*** *i) The employees of the Society shall be entitled to pension, gratuity, family pension and general provident fund benefits as admissible to the employees of the Central Government from time to time.*
>
> *ii) The employees who have not opted for pay scales of the IVth Central Pay Commission will continue to enjoy the benefits of contributory provident fund and the gratuity Rules of the Society as existed prior to the coming into force of these rules."*

52. The service rules of Respondent no. 2 provides:-

i. *3(1)(b)* ***'Director'*** *means the Director in charge of Administration and Finance of the Society.*

ii. *3(e)* ***'Controlling Authority'*** *means:*

i) *The Director in relation to posts in Groups 'C' and 'D' and*

ii) *The Council in relation to all other posts.*

iii. 3(k) ***'Sanctioning Authority'*** *means the Council of the society.*

53. SR 34, 35, 36 being relevant are as follows:-

<u>SR 34 Residuary Powers</u>

Any matter relating to the conditions of service of an employee, for which no provision is made in these rules, shall be determined by the Council in conformity with Government Rules in force.

<u>SR 35 Power To Relax</u>

Notwithstanding anything contained in these rules, the Council may relax any of the provisions of these rules in exceptional cases in the interest of the Society, with due care and caution, in consultation with the Government where necessary and also in the interest of an employee if the application of any of the provisions of these rules is causing undue hardship to him/her, also in consultation with the Government of India whenever necessary.

<u>SR 36 Removal of doubts</u>

1) Where a doubt arises as to the interpretation or application of any of the provisions of these rules the matter shall be referred to the Council for decision.

2) Where a doubt arises about a decision taken by the Council, the Director shall refer the matter to the Government whose decision shall be final.

54. **As SR 28 was not approved,** the respondent no. 2 vide office **order no. 37 dated 18.05.2001,** extended the benefit of employees provident fund and Misc. Provisions Act, 1952 to it's employees. The order reads as follows:-

> *"The regulation VII of the Asiatic Society regarding Provident Fund stipulates that the Provident Fund of the employees of the Asiatic Society shall be guided by the Employees Provident Fund and Miscellaneous Provisions Act, 1952.*
>
> *In accordance with this stipulation the employees are entitled to contribute at higher rate than that is prevailing at present which is 12% of salary as stipulated in the Act. The employer's contribution should also be equal to the contribution of the employees subject to maximum of 12% of Pay and admissible D.A. thereon.*
>
> ***It is, therefore, decided to follow the Regulation of the Society in terms of the aforesaid Provident Fund Act. This is being made effective from the salary month of May, 2001 onwards.***
>
> *In case any employee of the society desires to contribute to C.P.F. at the old rate prevailing prior to May, 2001 the rate of employers' contribution will remain same as before. If no intimation is received from any employee in writing before 25th May, 2001 the contribution to the E.P.F. shall be guided in terms of provisions contained under Regulation VII of the Asiatic Society."*

55. **Vide order dated 25th January, 2023, the Ministry of Culture directed the respondent no. 2 as follows:-**

That no remedial/ corrective action has been taken by the Asiatic Society, Kolkata and the Society continues to make employer's contribution over and above the statutory limit. This is a grave violation of Government's instructions in the matter.

The Asiatic Society, Kolkata has already been requested to stop deducting excess amount for employer's contribution to EPF immediately as they are against the provisions of EPF scheme and the rules and regulations of the Asiatic Society itself.

That even after the C&AG observations and inclusion of the para in their audit report no. 04 of year 2018, Asiatic Society continued to make the higher contribution in the EPF accounts of the employees, C & AG observed that for 160 employees, Rs. 1.19 Cr. was made as excess contribution during the period April, 2015 to March, 2017. As the Asiatic Society continued to make the excess contribution of more than 5 year since 2017, the excess contribution may have become now around Rs. 7 Cr. This undue contribution has been made from the Government Grant given to the Asiatic Society without any approval from the Ministry.

Stop contribution to Employer's share in violation of EPF provision as pointed out by Audit immediately and send a revised ATN within 15 days.

56. The principal contention of the Ministry of Culture in their letter dated 8th February, 2023 at page 54 to the writ application is as follows:-

"3. ....That ASK which is being fully funded by this Ministry has also decided to allow to continue to contribute an amount (i.e. Employees' share of contribution) over and above the statuary ceiling limit (computed at 12% of actual basis pay +DA) in terms of Para 29 of the Scheme in violation of the Scheme itself by taking a decision that as the employer (i.e. The Asiatic Society, Kolkata) will bear

the administrative charge payable to such employees under intimation to the Assistant Provide Fund Commissioner as per provisions in Para 26 (6) of the Scheme.

4. In this regard, I would like to intimate that Para 26 A(2) clearly stipulates that the employer shall not be under an obligation to pay any contribution over and above the prescribed limit fixed under Para 29 (2). However, relaxation allowed by the Society as per para 29 should be restricted only for the employees NOT EMPLOYERS contribution and bearing the administrative charges payable for such employees is not in consonance with the letter and spirit of the Act and ***does not have the sanction of the Ministry. The Ministry is not liable to extend any grant support towards a blatant violation of the provisions of the Central Act. Any legal or financial or statutory consequences arising out of wrongful contravention/violation of Act will be the sole responsibility of ASK, including non compliance of this Ministry's continued pursuance for abidance to the provisions of the Act.***

5. Keeping in view the above, ASK is being directed to kindly follow all the provisions of the EPF scheme in light of specific observations made by the Audit and to stop with immediate effect the employer's share over and above the stipulated rate and wage limit in violation of EPF rules and also to initiate recovery of excess payment made in EPF accounts. An action taken report in the matter may be furnished to this Ministry at the earliest and latest by 10th February, 2023. It is also informed that Secretary Culture has desired that a Meeting of the Planning Board of the ASK may be convened soon, for which an agenda may be prepared and sent in advance."

57. The Government of India (Transaction of Business) Rules, 1961, do not directly apply to autonomous bodies. Instead, these rules apply strictly to Central Government ministries and departments. **However, the administrative ministries that oversee these autonomous bodies are bound by them when processing approvals or service conditions.**

58. While the Transaction of Business Rules dictate how the government operates, **autonomous bodies are generally governed by their own specific Memorandums of Association, Rules, and Bye-laws approved by the Government of India.**

59. Para 4 of the said rules of 1961 provides the Inter-Department Consultations:-

Clause (2)(c) therein relate to the number or grade of posts, or to the strength of a service, or to the pay or allowances of Government servants **or to any other conditions of their service having financial implications;**

60. The Delegation of Financial Powers Rules (DFPR). 2024 apply directly to all Central Government Ministries, attached, and subordinate bodies. **While autonomous bodies have their own separate financial rules and bye-laws, the core principles and limits outlined in the DFPR and General Financial Rules (GFR) act as the governing baseline for these bodies as well.**

61. The financial procedures established by the Ministry of Finance are deemed applicable to autonomous bodies unless their specific bye-laws outline alternative financial procedures and the same is approved by the Govt. of India.

62. **Any distinct financial rules or amendments used by an autonomous body must be formally approved by the Government of India.**

63. **In the present case,** admittedly the respondent no. 2 being an **autonomous institution** functions under the Ministry of Culture, Govt. of India. **The service rules of the society were duly approved by the government of India on 25.05.1999 except clause 28** which is as follows:-

> ***"RETIREMENT AND OTHER BENEFITS, PENSION AND PROVIDENT FUND***
>
> ***SR 28*** *i) The employees of the Society shall be entitled to pension, gratuity, family pension and general provident fund benefits as admissible to the employees of the Central Government from time to time.*
>
> *ii) The employees who have not opted for pay scales of the IVth Central Pay Commission will continue to enjoy the benefits of contributory provident fund and the gratuity Rules of the Society as existed prior to the coming into force of these rules."*

64. SR 28, provides for the retirement and other benefits including pension and **provident fund.**

65. As such, when the service rules of the respondent no. 2 had the approval of the Govt. of India **except clause SR 28** which relates, also to provident fund, the respondent no. 2 is **bound**

by the Government of India (Transaction of Business) Rules, 1961 and the Delegation of Financial Powers Rules (DFPR) 2024.

66. The Delegation of Financial Powers Rules, 2024, Rule 8(5) provides:-

> ***"Rule 8(5)*** *The departments of the Government of India shall keep in view the following with regard to the numeric codification* ***for preparation of the Detailed Demands for Grants,*** *namely:-*
>
> *(i) the number of tiers of classification in the* ***Detailed Demands for Grants*** *shall be the standard six tiers indicated in the table below:*

S.N.	***Type of Head***	***Codification***
(1)	***(2)***	***(3)***
1.	*Major Head*	*-4 digits (Function)*
2.	*Sub-major Head*	*-2 digits (Sub-function)*
3.	*Minor Head*	*-3 digits (Programme)*
4.	*Sub-head*	*-2 digits (Scheme)*
5.	*Detailed Head*	*-2 digits (Sub-scheme)*
6.	*Object Head*	*-2 digits (Primary unit of Appropriation or object head)*

> *(ii) the numeric code numbers assigned by the Controller General of Accounts for Major, Sub-major, Minor Heads, Sub-heads and Detailed Heads for the Union and States shall be followed in the Detailed Demands for Grants;*
>
> *(iii) the distinction between Revenue and Capital Expenditure shall be as defined in the Government Accounting Rules and the General Financial Rules."*

67. Annexure 1, S.L. NO. 8 Code 04- of the said rules of 2024 provides for pensionary charges which includes provident fund.

68. Admittedly **SR 28 of the service rules of respondent no. 2,** which relates to the benefit of provident fund, **was not**

approved by the Govt. of India and as such SR 28 relating to **provident fund remains governed by the Government of India (Transaction of Business) Rules, 1961 and the Delegation of Financial Powers Rules (DFPR) 2024.**

69. **Rule 15 and Appendix-II** of the rule of 2024 relates to the **waiver and recovery of the excess payment** made.

70. As such, **SR 28**, relating to the pensionary charges which **includes provident fund** of the respondent no. 2, continues to be within the powers of the Government of India, being governed and controlled by the Government of India (Transaction of Business) Rules, 1961 and the Delegation of Financial Powers Rules (DFPR) 2024.

71. **In the present case,** the respondent no.2 acted in clear violation of the said rules, more so, the rule of 1961 which was in force, when the writ application was filed.

72. **Thus the respondent no. 1 is well within its power to govern the respondent no. 2 in respect of SR 28, which also relates to provident fund, as the said service rule has not been approved by the Govt. of India, in favour of the Respondent no. 2.**

73. The respondent no. 2 has thus acted beyond its powers, in independently taking decision in respect of SR 28, such acts thus being against the guidelines in the rules as referred to herein.

74. **Regarding refund**, the same shall be guided by Rule 15 and Appendix II of the rule of 2024.

75. The petitioners' case in the writ application being **WPA 6229 of 2023** thus having no merit **stands dismissed.**

76. Applications, if any, connected thereto stand disposed of consequently.

77. Interim order, if any, stands vacated.

78. Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul), J.]